



POLICE DEPARTMENT

March 27, 2013

MEMORANDUM FOR: Police Commissioner

Re: Detective Anthony Acosta
Tax Registry No. 896914
Narcotics Borough Bronx
Disciplinary Case Nos. 2010 2873 & 2012 7885

The above-named member of the Department appeared before me on February 14, 2013, charged with the following:

Disciplinary Case No. 2010 2873

1. Said Detective Anthony Acosta, assigned to Narcotics Borough Bronx, while off-duty, on or about July 26, 2010, at a location known to this Department, in [REDACTED] County, did fail and neglect to properly safeguard his service firearm, to wit a 9mm, Glock, Model 19, Serial # CTL963US.

P.G. 204-08, Page 2, Paragraph 7 – FIREARMS GENERAL REGULATIONS,
UNIFORMS AND EQUIPMENT

Disciplinary Case No. 2012-7885

1. Said Detective Anthony Acosta, while off duty and assigned to Narcotics Borough Bronx, on or about March 12, 2012, in [REDACTED] County, NY, failed to timely notify the Operations Unit after said Detective was involved in a verbal dispute with his [REDACTED] Person A, which involved the response of [REDACTED] County Sheriff's Department.

P.G. 212-32, Page 1, Note OFF DUTY INCIDENTS INVOLVING
UNIFORMED MEMBERS OF THE SERVICE

P.G. 208-37, Page 4, Additional Data – FAMILY OFFENSES AND DOMESTIC
VIOLENCE INVOLVING
UNIFORMED OR CIVILIAN
MEMBERS OF THE SERVICE

The Department was represented by Chai Park, Esq., Department Advocate's Office, and Respondent was represented by James Moschella, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who has been working for the Department for 22 years, is an investigator in Narcotics Borough Bronx and is assigned to the Operation Good Neighbor team. Respondent conducts undercover operations and investigates narcotics complaints. Respondent has been working in narcotics since 1996 and has been a detective since 1998. In 2010, Respondent was promoted in rank to Detective 2nd Grade. During his service, Respondent received commendations, including one for apprehending an individual with two weapons when responding to a shooting murder. Respondent earned approximately 15 Excellent Police Duty medals. Respondent estimated that he has made over 1,000 arrests in his career. Respondent has never been suspended and has no other prior disciplinary history.

Respondent has been [REDACTED] Person A [REDACTED]
[REDACTED]. Respondent at [REDACTED] reside
in [REDACTED].

Respondent owned three firearms. He kept two in his locker at his command and one service firearm— a 9 millimeter Glock serial number CTL963US—he would bring back and forth from home to work. Respondent explained that when he got home, he would take the weapon out of the holster, unload it, put it back into the holster unloaded and secure it in his safe along with the ammunition. The safe was located in his bedroom closet on the floor and operated with a combination lock and a key to access it. During July 2010, Respondent kept his Glock and important documents in that safe.

Respondent testified that his [REDACTED] did not have access to the safe and she did not have a key to the safe. He did not anticipate or believe that his [REDACTED] would open the safe to obtain his Glock. He kept the key to the safe in his armoire's underwear drawer underneath his underwear. In addition to the key, the safe required a combination password for access. Respondent did not believe that his [REDACTED] knew that combination.

On July 26, 2010, after spending the week before on vacation, Respondent was preparing to return to work and discovered that his Glock was not in his safe. He explained how he contacted his supervisor and suspected his [REDACTED] had taken his Glock:

After that, I called my supervisor and told him that the gun was missing and that I believe that Person A had taken the gun out. I didn't know no [sic] way the gun could have been taken out because she was the only one in the house with me... I first thought that I might have left it at work, but then in reviewing my thoughts, I know I had brought it home and put it in the safe. That is just the last one that goes in the safe and I don't look at it until I am ready to go back to work. Then after that, I called 911 ... [and told the 911 operator] [t]hat my weapon was missing from the safe and I believe my [REDACTED] had taken it.

Respondent believed his [REDACTED] had taken the Glock because she lived in his house and he did not see indications of burglary. Respondent believed, "No one could have

gotten inside the safe unless they [sic] knew where the key was and knew the combination and where the combination was.” Respondent stored his combination password mentally and in a small written ledger in the armoire in his room. Respondent acknowledged that his [REDACTED] had access to the ledger. Respondent also acknowledged—with the benefit of hindsight—that his [REDACTED] accessed the combination from the ledger, found the key, opened the safe, and took his Glock.

Respondent explained that his [REDACTED] had health problems at the time this occurred. In addition to Lyme disease restricting her physical movement, she had mental issues due to her illness and her mother’s recent death. Despite these problems, Respondent did not ever think prior to July 26, 2010, that she was capable of taking his Glock. Moreover, prior to that date, she never made comments about taking it.

Later that day, at 3:00 p.m., Respondent learned that his [REDACTED] was found sitting in her car with his Glock in her purse. The Glock was unloaded and cocked back with the rounds outside. The magazine was not in the Glock, the Glock was still in the holster, and the Glock’s slide was locked to the rear. Respondent noted that the Glock’s condition was in the same condition as when he put it in the safe. His [REDACTED] was arrested and went to a hospital for a two-week evaluation. She was subsequently charged with Criminal Possession of a Weapon. After pleading guilty to attempted Criminal Possession of a Weapon, she was sentenced to one year of probation. Respondent has not gotten back his Glock because he was waiting for its release from the district attorney.

Respondent then testified about a verbal dispute with his [REDACTED] on March 12, 2012. During the day, Respondent was out shopping and returned home later that afternoon with many Walmart bags. His [REDACTED] asked where Respondent had been and he told her he had been shopping. This interaction was a “calm conversation.” Later that night, she

mentioned the shopping again and she was upset. She asked him to leave. Respondent said that “[he] did not want to leave and [he] did not have to leave.” His [REDACTED] said she would call the police, but Respondent told her he believed it was his right to stay there. This dispute was not a physical dispute; Respondent never made physical contact with her or vice versa. Respondent was present when she called 911, telling them that she had a disagreement with Respondent and had asked him to leave. She mentioned that Respondent was a police officer. She did not accuse him of wrongdoing or misconduct.

Respondent stayed until one sheriff from the [REDACTED] County Sheriff’s Department arrived. When the sheriff arrived around 10:00 p.m., Respondent identified himself as a police officer. His [REDACTED] spoke with the sheriff while Respondent was present, telling the sheriff how she asked Respondent to leave and Respondent did not want to leave. The sheriff “told her that [Respondent] lives at the residence and unless she was threatened and harassed that [Respondent] did not have to leave.” She did not allege that Respondent hit her, harassed her, or otherwise committed misconduct against her. Respondent explained how the situation resolved itself: “[The sheriff] told her that he could not ask me to leave then a [sic] prepared a domestic incident report. During that time, I had asked him if it was best that I just leave just in case there was any other time that she would want to call back and if she was still upset, I thought it was best so I left on my own.” Although the sheriff did not order Respondent to leave, Respondent left voluntarily around 11:30 p.m. to his mother’s house.

Respondent went to work the next day at Narcotics Borough Bronx. Once at the office, Respondent told Lieutenant Davis what had happened. Respondent explained that he did not call the Operations Unit the night before because “[he] didn’t think it was a requirement to call the Department if a [s]heriff had showed [sic] up and there [was] no

crime committed or any type of allegations against [him].” Respondent conceded that he now knows that he must immediately notify the Operations Unit any time he is in contact with the police, even if there are no allegations of wrongdoing.

Subsequent to the incident on March 12, 2012, Respondent and his [REDACTED] had another verbal dispute with no physical contact and police responded to the house after 911 was called. After police prepared a domestic incident report and left, Respondent immediately notified the Operations Unit. Respondent’s [REDACTED] did not allege that he hit her, harassed her, or otherwise committed misconduct against her. Respondent still contacted the Operations Unit because “[i]t’s a requirement for the New York City Police Department.”

On cross-examination, Respondent acknowledged that he stored his combination password in a written ledger in the armoire in his room. Respondent conceded that the same armoire contained this ledger and the keys to the safe. Respondent knew that his [REDACTED] had mental problems and was aware that she had attempted suicide prior to the incident on July 26, 2010, though she had not tried to do so using weapons. Respondent reaffirmed his understanding, based on the police investigation, that she never removed his Glock from her bag. However, Respondent did acknowledge that he was not sure if she had removed the Glock prior to the police recovering it.

On redirect examination, Respondent explained that his [REDACTED]’s previous suicide attempts did not involve weapons but involved prescription medications. Respondent did not have reason to suspect she would take his Glock, based on her never accessing it before or threatening herself before.

Upon further questioning by the Court, Respondent said he joined the Department on October 15, 1990. Respondent was already a police officer when he [REDACTED].

Respondent's [REDACTED] never gained access to his weapon other than on July 26, 2010. Respondent's [REDACTED] did not independently know the safe's combination, but gained access to the combination through the ledger. On the day after the verbal dispute on March 12, 2012, Respondent was set to work from 9:00 a.m. to 5:00 p.m. and started at 8:30 a.m. Respondent never thought about calling the Operations Unit when he stayed the night before at his mother's house, at which he arrived at 12:30 a.m. and immediately went to sleep.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

Respondent was appointed to the Department on October 15, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to failing to properly safeguard his service firearm and failing to timely notify the Operations Unit after being involved in a verbal dispute with his [REDACTED] which involved the response of the [REDACTED] County Sheriff's Department.

The Assistant Department Advocate (Advocate) asked for a penalty of the forfeiture of 20 vacation days. The Advocate cited Disciplinary Case No. 86552/10 (December 15, 2011) to support the failure to safeguard charge. In that matter, an 11-year member of the service forfeited 20 vacation days when he kept his firearm in a box on top of his safe and the firearm was stolen. While the Court recognizes that 20 vacation days is the standard penalty in many failure to safeguard firearm cases, this case can be distinguished from the cited case. For one, this Respondent did not just rest his firearm

anywhere, he was in a long-term [REDACTED] his [REDACTED] and he secured his firearm in his safe which not only had a combination lock to secure it, but also a key. Respondent testified that to his knowledge, his [REDACTED] never retrieved his firearm aside from this instance, which was a result of a medical condition which diminished her mental capacity. Respondent's case is more in line with Disciplinary Case Nos. 83832/08 & 83886/08 (January 26, 2011). In those matters, Respondents, both members of the service, lived together and stored their firearms in a safe in their apartment. Their apartment was burglarized and the safe which weighed over 50 pounds, was removed and their firearms were stolen. In that instance, this Court found that by Respondents storing their firearms in a safe, they had no reason to believe that the firearms were not secure in their apartment and recommended that they be found Not Guilty. Similarly, Respondent had no reason to believe that his firearm was not secured when he placed it in a locked safe with a combination that only he had the key and combination with which to open it.

Respondent acknowledged, however, that he failed to safeguard his firearm and pleaded Guilty in this instance. He admitted that his [REDACTED] was able to locate the place where he hid the only key to the safe, as well as uncover the location where he wrote down the combination number to the safe even though he had the combination number committed to memory. It is a mitigating factor nonetheless that Respondent had been [REDACTED] his [REDACTED] for over 20 years and she never removed his firearm in the past. In addition, he thought, albeit mistaken, that the place where he hid the key and combination information was secure. It ends up, Respondent's [REDACTED] who suffers from a psychological condition, was able to locate the key to the safe, as well as the combination information and remove Respondent's firearm from a locked safe. In essence, Respondent's [REDACTED] stole his firearm for no apparent reason. She was found later that day to have

Respondent's firearm amongst her possessions. She was later hospitalized for psychiatric evaluation for over two weeks. Eventually she was charged by [REDACTED] County with attempted Criminal Possession of a Weapon. She pleaded Guilty and was sentenced to one year probation.

With respect to the Specification for failing to timely notify the Operations Unit of a verbal dispute, the Advocate cited the following case, Disciplinary Case No. 85991/09 (April 25, 2011). In that matter, a nine-year member of the service forfeited five vacation days for failure to notify the Department of an Administration for Children's Services case. This case can clearly be distinguished from Respondent's case because Respondent in this matter did, in fact, make a notification to the Department. Respondent had an incident at his home on the evening of March 12, 2012. By the time the sheriff's office left his residence and determined that no crime had been committed, Respondent decided to leave his residence and go his mother's house for the night. He testified that he arrived sometime after midnight. He had a morning tour in Bronx Narcotics. He testified that he went to sleep, arrived at work at about 8:30 a.m. and immediately reported the incident to his lieutenant that next morning.

Respondent testified credibly that he never thought he had to make a notification to the Operations Unit where no one was arrested, there was no finding of criminal activity and he was told that he did not have to leave his residence, but chose to do so to keep the peace. Of course, Respondent pleaded Guilty to this Specification acknowledging that he now knows, whenever there is a police response to his residence, regardless of the outcome, a notification to the Operations Unit must be timely made. Although "timely" is never defined, Respondent took this to mean that a notification must be made in close proximity to the incident. He had a subsequent domestic incident at his

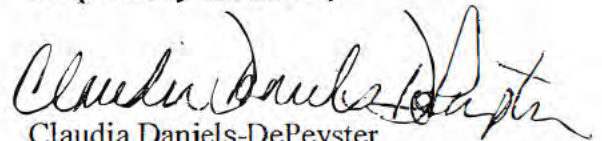
residence. Even though it was minor, he made a notification to the Operations Unit that night.

The Court finds mitigating factors here. Respondent made a notification to his command the next day; he just did not realize that he had to notify the Operations Unit. The Court finds this to be a good faith mistake. The Respondent did make a notification, unlike the cited case where that member failed to notify the Department.

This is an extraordinary case for many reasons. The fact that the Court finds mitigating factors here in both instances as outlined above where the cases are distinguished. The fact that Respondent has a stellar service record in a 23-year career with the Department without incident warrants consideration. As noted in the confidential memorandum, Respondent has unprecedented annual evaluations as well as an exceptional arrest record. In addition, Respondent was very remorseful and emotional regarding these matters.

Accordingly, for the above-mentioned reasons, it is recommended that Respondent forfeit eight vacation days to resolve the charges pending against him.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials

APPROVED
APR 08 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE ANTHONY ACOSTA
TAX REGISTRY NO. 8966914
DISCIPLINARY CASE NOS. 2010-2873 & 2012-7885

In 2011, Respondent received an overall rating of 5.0 "Extremely Competent" on his annual performance evaluation. In 2010, he received a rating of 4.5 "Above Highly Competent." In 2009, he received a rating of 5.0 "Extremely Competent." Respondent has received 12 Excellent Police Duty medals and one Commendation in his career to date.

[REDACTED]
[REDACTED] Respondent has made 1133 arrests in his career.

Respondent has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials